IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 940 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION BANK OF INDIA
Versus
GIGARAM & SONS

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Appearance :
MR ARVIND R YADAV for Appellant.
MR JIVANLAL G SHAH for Respondent.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 28/09/2006

ORAL JUDGMENT

This appeal is directed against the judgment and decree passed by City Civil Court, Ahmedabad on 25th March 1986 in Civil Suit No. 2422 of 1980. By the aforesaid judgment and decree the learned trial Judge has decreed the suit filed by the respondent herein and the present appellant, original defendant of the said suit, is directed to pay a sum of Rs.31,940-50 with 6% interest.

Another Civil Suit being Civil Suit No. 2829 of1982 which was filed by the present appellant against the present respondent [against which FA No. 941/86 is filed] was also heard together and by a common judgment and decree the learned trial Judge disposed of both Civil Suit No. 2422 of 1980 and 2829 of 1982 by judgment and decree dated 25th March 1986. The trial Court directed the defendants of C.S. No. 2422 of 1980 [present appellant] to pay Rs.31,940-50 paise with interest at 6%p.a. So far as Civil Suit No. 2829 if 1982 is concerned, the trial Court directed the defendants to pay Rs.1640/- with six per cent interest per annum.

The present appeal [F.A. No.941/86] is filed nu the original defendant against the judgment and decree passed in C.S. No.2422/80.

So far as the facts of the present case is concerned, respondent Gigaram & Sons instituted C.S. No. 2422 of 1980 in the City Civil Court, Ahmedabad. The said suit was filed against the appellant Bank for recovery of Rs.31,940-50. The case of the original plaintiff in the suit was that the plaintiff is a partnership firm, registered under the Indian Partnership Act, and is carrying on business as Cloth Merchant and Commission Agent in the city of Ahmedabad. The plaintiff was granted Bill Purchase Facility from the Bank to the extent of Rs.1,00,000-00 and the plaintiff has so far availed the said facility to the tune of Rs.2,90,000/-. It is the case of the plaintiff that in March, April and May 1978, the plaintiff produced bills for the goods worth Rs.81,127-72 allegedly sent to M/s. Kamlesh Textiles, and had also produced lorry receipts issued by M/s. Inland Carriers. However, M/s. Kamlesh Textiles Delhi to whom the material was allegedly sold did not honour the documents as the goods never reached Delhi. When the bills, lorry receipts and hundis etc were returned by M/s. Kamlesh Textiles, the Bank asked for security from the plaintiff on 20.11.1978 and the plaintiff gave 17 bales of cotton as security to the Bank on 23.1.78. Upon inquiry, it was found that the the plaintiff had not sent the goods shown in the bills and yet availed Bills Purchasing facility from the Bank and the Bank, therefore, filed Criminal Complaint being No. 681/79 in the Criminal Court at Ahmedabad against the plaintiff in the Court of Metropolitan Magistrate,

Court No.3, Ahmedabad. In the said complaint, a compromise was arrived at on 16.08.79, and the plaintiffs paid in all a sum of Rs.82,127-72 as per the compromise terms and out of the 17 bales lying with the Bank as security, the plaintiff was handed over 8 bales and the remaining bales were kept with the Bank as security for the amount due to the Bank towards interest, godown charges and legal expenses etc. However, it is the case of the plaintiff in the suit that after compromise, the defendant had promised the plaintiff that the Bank will return all bales which were taken as security by the defendant Bank from the plaintiff against its dues and the Bank had returned 8 bales to the plaintiff on 14.11.1975 but kept 9 bales with it. The said 9 bales were not returned by the Bank to the plaintiff and it is also the case of the plaintiff that the total value of the said 9 bales is Rs.31,940-50. The plaintiff therefore filed the aforesaid C.S. No. 2422 of 1980 for recovery of Rs.31,940-50 with running interest at 6% till realization which according to the plaintiff is cost of aforesaid 9 bales. It is also the case of the plaintiff that the plaintiff had written letter to the Bank by which he demanded the said cost but since the Bank did not return the same, the aforesaid suit for recovery of the amount in question was filed. The case of the plaintiff in the suit was that the plaintiff had not obtained any loan against the said goods inspite of that the defendant Bank had illegally and unauthorisedly retained the goods with it.

The aforesaid suit was resisted by the defendant [present appellant] by filing written statement at Exh. 12 on the ground that the suit is not maintainable. It was contended on behalf of the respondent Bank that the suit is filed with malafide intention as the plaintiff had taken facility of Bill Purchase Facility and obtained a limit of Rs.1 lakh. It is also contended that the plaintiff executed a hypothecation letter dated 24th April 1978 and also executed a letter of guarantee of one Baluram Gupta. It is also the case of the Bank that if the defendant was required to return all the 17 bales after the compromise before the criminal court, the said fact would have been reflected in the compromise purshis itself. According to the Bank, the Bank retained the afore said 9 bales towards security of their dues in connection with interest as well as godown charges and advocate fees and other costs. According to the Bank, the plaintiff was duty bound to pay Rs.27,330-00 towards interest, godown charges, legal expenses and other charges. On these and other grounds, the aforesaid suit was resisted by the Bank in the trial Court.

The appellant Bank thereafter also instituted substantive suit being C.S. No. 2829 of 1982 against the respondent [present respondent] for recovery of Rs.27,330-60 being the amount of interest, godown charges etc.

The learned trial Judge consolidated both the suits as per the order passed below Exh. 35 in C.S. No. 2829/82 and evidence was recorded in C.S. No. 2422/80. Learned trial Judge framed issues at Ex.30, and after considering the oral and documentary evidence on record, decreed both the suits partly. So far as C.S. No. 2422 of 1980, the trial Court directed the defendants [present appellant] to pay Rs.31,940-50 paise with interest at 6%p.a. So far as Civil Suit No. 2829 of 1982 is concerned, the trial Court directed the defendants to pay Rs.1640/- with six per cent interest per annum. However, the Bank was not satisfied with either of the decrees, and, has therefore filed F.As. No. 940/86 and 941/86.

So far as the present appeal is concerned, the same relates to the decree passed in C.S. No. 2422 of 1980. Learned advocate Mr. Yadav for the appellant Bank vehemently submitted that the learned trial Judge has committed an error in appreciating oral as well as documentary evidence and considering the facts and circumstances of the case, the suit was required to be dismissed as according to him, the Bank was entiteld to charge interest and other charges for which the Bank had kept aforesaid 9 bales in question in its custody towards security.

Learned advocate Mr. Bhatt on the other hand supported the decree of the trial Court passed in the aforesaid cases.

In this connection, it is required to be noted that Criminal Case No. 681/79 was filed by the Bank against the partners. The case was filed under section 420, 467 and 471 of the Indian Penal Code on the ground that the accused have committed fraud in respect of the goods covered under the bills. The case, however, was compromised on 16.08.79. Subsequently, on 17.08.79, the respondent firm wrote a letter to the Bank to return cotton bales pledged with the Bank. It is not in dispute that in view of the payment of the principal amount, the criminal case was withdrawn in 16.08.79. However, in the consent purshis submitted before the competent criminal court, it is not stated that the remaining cotton bales in possession of the Bank has to be handed over to the firm. On the contrary, the respondent firm, subsequent to the order of the criminal Court, by writing a letter dated 17.08.79, requested the Bank to waive interest and return the pledged cotton bales. Subsequently, on 14.11.79, eight cotton bales were returned by the Bank and nine cotton bales were retrained by the Bank towards interest amount, godown charges and other charges which were found due and payable by the respondent firm in the loan account. The aforesaid facts would show that the Bank was entiteld to keep 9 bales as security towards the interest and other charges. The Bank subsequently sold the pledged goods to the highest bidder at Rs.10,800/- and gave credit of the same in the borrower's account. The Bank subsequently filed summary suit No. 2829/81 for

recovery of its remaining outstanding amount of Rs.27,330-60 and the trial Court passed a decree of Rs.1640/- with interest in favour of the Bank.

It is required to be noted that the dues of the Bank towards interest, godown charges and legal expenses etc. cannot be said to have been wiped out simply because a settlement was entered into before the criminal court. It is an admitted position that even after the settlement, the Bank continued to have pledge over the 9 bales in connection with the other outstanding amount towards interest and other charges.

Learned trial Judge has given much weightage to the purshis given before the Criminal Court at Exh. 41 wherein it is stated that "_____ _____ _____ _____ _____ [the entire amount having been paid up]. It is required to be noted that if it was the case that the entire amount was paid up, there was no question on the part of the respondent firm to write a letter to the Bank requesting them to waive interest. Even in the consent purshis it is not mentioned that the cotton bales in the custody of the Bank as security is to be returned back to the accused. In fact, the Bank had, after the compromise arrived at in the criminal case, parted with some of the cotton bales, and retained only 9 bales towards the outstanding amount towards interest and other charges. I find considerable force in the submission of learned advocate for the

Bank that the respondent had not paid interest on the amount advanced to the respondent, which, according to the Bank comes to Rs.22,750-00 as well as godown charges of Rs.1,309-30 and legal and other expenses incurred by the Bank to the tune of Rs.3,271-00 [totalling to Rs.27,330-60] for which 9 bales were retained by the Bank. According to learned advocate for the Bank, the settlement before the criminal Court was made in connection with the principal amount fraudulently availed of by the plaintiff under the Bill Purchase facility. In my view, considering the evidence on record as well as considering the evidence of the case, it cannot be said that simply because the Bank has entered into a settlement before the criminal Court, the Bank has given up its claim by waiving the interest. Simply because other charges were not included at the time of settling the claim, it cannot be said that other claims are said to have been wiped out. In my view, therefore, the trial Court was not justified in coming to the conclusion that full and final amount was paid at the time of placing consent purshis before the criminal Court and the only amount to which the Bank was entiteld to was Rs.82,127-72 as per the compromise terms and the Bank was not entiteld to any other amount.

The learned trial Judge has failed to consider that after the criminal case, the plaintiff-firm itself had written a letter dated 17.08.79 for waiving interest. That goes to show that they were

aware that they were required to pay interest and the Bank is entitled to charge interest, and, therefore, request for waiving was made. The learned trial Judge erred in coming to the conclusion that ledger which is produced by the Bank is not reliable. Considering the aforesaid aspect of the matter, and considering the evidence on record, in my view, the learned trial Judge has committed an error in decreeing the suit.

It is required to be noted that by making payment of Rs.82,127-72, it cannot be said that the entire payment due to the Bank, including he claim of interest, godown charges etc., can be said to have been settled. Learned trial Judge erred in holding that there cannot be any assumption in the hypothecation agreement with regard to the interest amount. The learned trial Judge also erred in holding that there was no direct evidence to show the Bank is entiteld to charge interest.

Considering the aforesaid aspects of the matter, the Bank is entitled to recover interest for late payment of the principal amount as well as godown charges and other expenses. The appeal is accordingly allowed. The judgment and decree passed by the trial Court in question in Civil Suit No. 2422/80 is quashed and set aside. Consequently, Civil Suit No. 2422/80 stands dismissed.

If any amount is deposited by the Bank, the Bank will be entiteld to the refund of the same, for which the Bank shall take out appropriate proceedings for recovering the same. The effect of the same is that the appellant Bank will be entiteld to recover the amount if any deposited by the Bank pursuant to the judgment and decree passed by the trial Court in C.S. No. 2422/80. If the amount is deposited in Fixed Deposit, then naturally, the interest accrued thereon will also be paid over to the Bank-present appellant.

The appeal is accordingly allowed. No order as to costs.

[P. B. MAJMUDAR, J.]

mathew